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SEP 29 2008

In re Application of:	:	
Ly et al.	:	
Application No. 09/590584	:	DECISION DISMISSING
Filing or 371(c) Date: 06/08/2000	:	PETITION UNDER
Title of Invention:	:	37 CFR 1.47(a)
METHODS FOR AUTOMATICALLY	:	
PIPELINING LOOPS	:	

This is in response to the Petition for Prosecution of Application in Broadening Reissue of Patent Pursuant to 37 C.F.R. 1.47: Joint Inventor Cannot be Found or Reached, filed April 22, 2008. The delay in treating this petition is regretted.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under [insert the applicable code section]"; should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

Background

Applicant files the present petition for examination of the application for broadening reissue on behalf of inventor Ronald A. Miller who, Applicant asserts, cannot be found or reached after diligent effort. In support of the petition, Applicant states that Applicant attempted to deliver the updated declaration to three addresses that Applicant could find for inventor Miller, but all of the attempts have failed. Applicant files copies of the cover letter and return to sender record of each document package sent to inventor Miller.

A review of the cover letter reveals that the letter states that the Declaration was attached thereto, along with the most recent response to the Office action.

Applicable Law, Rules and MPEP

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), the MPEP provides:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration.

MPEP 409.03(d).

Analysis

Applicant has not presented evidence of a bona fide effort to present copy of the application papers to the non-signing inventor. Absent an express refusal to join in the application, Applicant must present a copy of the application papers to the nonsigning inventor. The MPEP further provides

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

MPEP 409.03(d).

Further as to item (1), Applicant is advised that, where an inventor is unavailable (cannot be reached), Petitioner must establish the exercise of diligent effort in trying to find or reach the

nonsigning inventor. A statement of facts should be submitted from a person with first hand knowledge of the facts relied upon that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the inventor. See, MPEP § 409.03(d).

At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. It is important that the forthcoming communication contain statements of fact as opposed to conclusions. See, MPEP § 409.03(d).

Analysis/conclusion

Applicant must demonstrate a bona fide effort to present the inventor with the application (specification, claims and drawings). Applicant must also provide a statement of facts from a person with first hand knowledge of the facts relied upon that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the inventor, and Applicant must provide copies of the results of the search that was conducted for the inventor.

The petition is dismissed without prejudice. Applicant is advised to file a Request for Reconsideration of Petition and include the necessary statement of facts and copies of searches and results.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
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